

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

CITY OF SOUTH BEND,)	
Plaintiff,)	
vs)	
)	
SOUTH BEND COMMON COUNCIL, TIM)	
CORBETT, DAVE WELLS, STEVE)	
RICHMOND, BRIAN YOUNG, and SANDY)	Case No.
YOUNG,)	3:12-CV-475
Defendants.)	
-----)	
BRIAN YOUNG, SANDY YOUNG,)	
TIMOTHY CORBETT, DAVID WELLS,)	
and STEVE RICHMOND,)	
Plaintiffs,)	
vs)	
)	
THE CITY OF SOUTH BEND Acting)	
through its Police Department,)	
DARRYL BOYKINS, Individually and)	
in his Official Capacity as)	
Chief of Police, KAREN DePAEPE,)	
and SCOTT DUERRING,)	
Defendants.)	
-----)	

The Videotaped Deposition of DARRYL BOYKINS

Date: Monday, April 15, 2013

Time: 9:12 a.m.

Place: Pfeifer, Morgan & Stesiak
53600 North Ironwood Drive
South Bend, Indiana 46635

Called as a witness by the Defendants/Plaintiffs
in accordance with the Federal Rules of Civil
Procedure for the United States District
Court, Northern District of Indiana, South Bend
Division, pursuant to Notice.

Reported by
Angela J. Galipeau, RPR, CSR
Notary Public, State of Indiana

COPY

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11 Ms. Sandy Young

Mr. Timothy Corbett

12 Mr. David Wells

Mr. Scott Duerring.

13 * * *

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1 VIDEOGRAPHER: Please swear in the deponent.

2 DARRYL BOYKINS

3 called as a witness by the Defendants/Plaintiffs, having
4 first been duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. PFEIFER:

8 Q. Tell me your name, please.

9 A. Darryl Boykins.

10 Q. I'm Dan Pfeifer. We just met a few minutes ago. Have you
11 ever had your deposition taken before?

12 A. Yes, sir.

13 Q. I'm going to go through some ground rules. You probably
14 heard them. They may be old information to you, but I'm
15 just going to repeat them so that we have a clear
16 understanding as to the process today. Fair enough?

17 A. Fair.

18 Q. This is being videotaped, and there's a court reporter
19 seated to your right. Her job is to take down everything
20 that is spoken, and the key to what I just said is spoken.
21 She cannot take down a nod of the head up and down or left
22 and right. Okay?

23 A. Yes.

24 Q. Uh-huh, huh-uh, hum-hum, um-hum is frequently used in
25 everyday conversation. For purposes of today, the

1 transcript may not come out accurately. So instead if you
2 could just say yes or no. Fair enough?

3 A. Fair enough.

4 Q. At any point in time if you are asked a question by any of
5 the attorneys that you do not understand, please let us
6 know and the attorney asking the question will then do his
7 or her best job to rephrase it so you do understand it.
8 Is that fair?

9 A. That's fair.

10 Q. So if you answer the question, we're going to assume if
11 you don't tell us otherwise that you understood what was
12 being asked. Is that fair?

13 A. That's fair.

14 Q. Okay. In everyday conversation, it is very common for
15 people to speak on top of each other. For purposes of
16 this process today, that doesn't work out real well. The
17 court reporter has to take down everything that is spoken,
18 as I just said; and if two people are talking at the same
19 time, her fingers cannot go fast enough. So I will let
20 you finish answering the question before I start asking
21 the next one, if you would let me finish asking before you
22 start answering. Is that fair?

23 A. That's fair.

24 Q. Finally, this is not intended to be a marathon session.
25 So if at any point in time you need to take a break,

1 please say something and we can take a break. The only
2 thing that we ask is if there is a question that has been
3 asked, that you answer the question before we take a
4 break. Is that fair?

5 A. That's fair.

6 Q. Okay. Are you employed, sir?

7 A. Yes, I am.

8 Q. Where is that at?

9 A. South Bend Police Department.

10 Q. How long have you been employed there?

11 A. 28 years.

12 Q. What is your current position there?

13 A. Captain.

14 Q. How long have you been a captain?

15 A. In this present position?

16 Q. Yes.

17 A. About almost a year.

18 Q. What are your job responsibilities currently?

19 A. I'm in charge of the SROs, the street crime unit, the
20 crossing guards, and the summer youth program.

21 Q. Before being a captain, what was your position with the
22 South Bend Police Department?

23 A. I was the Chief of Police.

24 Q. How long were you the Chief of Police?

25 A. From December the 7th until, I think, May 2013 -- '12.

1 Yeah, '12. '12, sorry.

2 Q. So all of 2008, all of 2009, 2010, 2011, and part of 2012?

3 A. '12, yeah.

4 Q. Is that fair?

5 A. Yes.

6 Q. During the course of this questioning today, you may be
7 asked questions about your -- certain things when you were
8 the Chief of Police. Can we have an understanding if we
9 refer to your position as Chief of Police, we're referring
10 to questions that would pertain to that time period as
11 long as you were the Chief of Police. Okay?

12 A. Yes.

13 Q. Okay. When you were first hired in with the South Bend
14 Police Department, what was your position?

15 A. Patrol officer.

16 Q. How long were you a patrol officer?

17 A. About seven years.

18 Q. Then I assume you got a promotion?

19 A. I went to K9 unit and then got a promotion.

20 Q. Okay. After being in the K9 unit, what was your promotion
21 to?

22 A. Sergeant III, midnights, street sergeant.

23 Q. And what were your responsibilities as street sergeant?

24 A.. I was in charge of a unit on midnight/afternoon, and I was
25 in charge of all the midnight officers, just responsible

1 as a supervisor.

2 Q. How long were you a sergeant holding that position,
3 approximately?

4 A. Approximately about four years.

5 Q. So from what year to what year, just so we have a general
6 idea?

7 A. Oh, man, probably somewhere in '90, '92 or something. I
8 can't be real precise on that.

9 Q. We're going back in time, so I'm not asking you a lot of
10 precision in that area. Okay.

11 After that position, what was your next position?

12 A. I got promoted to a lieutenant.

13 Q. As a lieutenant, what were your responsibilities?

14 A. Just a little bit higher up with the detail. I was second
15 in charge of the detail, beyond the captain; and it was on
16 midnight shift.

17 Q. Okay. And was that a lieutenant for patrol division?

18 A. Yes, patrol division. Sorry.

19 Q. And the sergeant position, was that in the patrol division
20 also?

21 A. Yes, sir.

22 Q. When you were sergeant in the patrol division or a
23 lieutenant in the patrol division, did you have a specific
24 office that was assigned to you?

25 A. No. We have one office that the sergeants and lieutenants

1 shared behind the front desk.

2 Q. Okay. So all the patrol officers, sergeants, and
3 lieutenants would operate out of that area behind the
4 front desk?

5 A. Yes.

6 Q. Okay. After the position of lieutenant in the patrol
7 division, what was your next position?

8 A. Captain.

9 Q. In the patrol division still?

10 A. Yes, sir.

11 Q. Okay. How long approximately were you the captain in the
12 patrol division?

13 A. Probably for three years, four.

14 Q. Then what was your next position?

15 A. Division chief.

16 Q. Okay. Division chief of what division?

17 A. Of uniform.

18 Q. Okay. Tell me, if you would, the responsibilities for the
19 division chief of uniform.

20 A. I was in charge of all street uniform divisions, and that
21 was on the police department. I regulated the supervisors
22 and captains on each shift, and that was my responsibility
23 reporting directly to the Chief of Police.

24 Q. When you were the division chief of the uniform officers,
25 who was the Chief of Police?

1 A. Chief Fautz.

2 Q. So at least in terms of your tenure at the South Bend
3 Police Department, we're now up to that period of time
4 when Tom Fautz was the Chief of Police, correct?

5 A. Yes, correct.

6 Q. How long did you remain division chief over the patrol
7 officers?

8 A. You mean until -- almost four-and-a-half years.

9 Q. Okay. From that position, what was your next position?

10 A. Chief of Police.

11 Q. Okay. So you went from division chief over all of the
12 patrol officers to the Chief of Police?

13 A. Yes.

14 Q. Okay. When you were the division chief over all the
15 patrol officers, did you have a particular office?

16 A. Yes.

17 Q. That was assigned to you?

18 A. Yes.

19 Q. Did you have your own phone?

20 A. Yes.

21 Q. Do you remember specifically what your dedicated phone
22 number was when you were the division chief?

23 A. No, no.

24 Q. Do you have any knowledge or information as to when you
25 were the division chief whether your phone was recorded?

1 A. No. Nobody said unless it was Jim Hassig, the Uniform
2 Division chief who might have said something about the
3 phone; but I can't be sure if he did.

4 Q. So is it fair, as you sit here, you don't know whether
5 your phone, when you were the division chief, was or was
6 not recorded?

7 A. No. I knew it recorded later. I learned that later, but
8 not at the beginning when I first took the job.

9 Q. Okay. When did you learn that your phone while you were
10 the division chief was being recorded?

11 A. Probably six months after I was in there, maybe a little
12 longer.

13 Q. Can you give me an approximate time period?

14 A. No. I know it had to be a year after whatever time I got
15 hired or put into that position to a year and a half
16 afterwards to that, but I haven't got the direct dates and
17 -- and dates on that.

18 Q. How is it that you learned that your phone as a division
19 chief was being recorded?

20 A. I think Barb, the secretary.

21 Q. Barb, does Barb have a last name?

22 A. Holleman.

23 Q. And whose secretary was she?

24 A. Chief Fautz.

25 Q. How is it that it came about that Barb told you that your

1 phone was being recorded?

2 A. I think they were going around checking on phones. I
3 think the chiefs were checking to see if phones were
4 recorded, like every year they check and find out whether
5 you have a phone or a line. I think that's how that came
6 about.

7 Q. Okay. You've said a couple of different times, "I think."
8 What I want to make sure that we're doing is you're
9 telling us what you know and not what you think or what
10 you are guessing. Fair enough?

11 A. Fair enough.

12 Q. Okay. So if you know something for sure, answer the
13 question that is asked. If you don't know, then tell us
14 your don't know. Is that fair?

15 A. Right.

16 Q. Okay. So do you have now an independent recollection as
17 to how you became aware of the fact --

18 A. No.

19 Q. Okay. Do you even know if your phone was being recorded?

20 A. Yes.

21 Q. How is it that you know?

22 A. I was told.

23 Q. By?

24 A. Barb Holleman.

25 Q. Approximately six months to a year after you became the

1 division chief?

2 A. Yes.

3 Q. Tell me, if you would, what you remember about the
4 conversation between you and Barb Holleman where you tell
5 us that you learn that the phone for the division chief of
6 patrol unit was being recorded.

7 A. I think -- there I go again. Barb must have said
8 something in the relationship that your phone line is
9 recorded.

10 Q. Is that -- when this conversation took place, as you're
11 telling us, would that have been the first time that you
12 became aware that your phone was being recorded?

13 A. Yes.

14 Q. When you learned that your phone was being recorded, were
15 you told how long it had been recorded?

16 A. No.

17 Q. Did you have any problems or concerns that your phone had
18 been recorded without you knowing it?

19 A. No.

20 Q. Why not?

21 A. It didn't faze me. I didn't look at it that way.

22 Q. Did Barb ever indicate to you that the recording of your
23 phone generated or resulted in tapes of the recording
24 being kept?

25 A. No.

1 Q. So if I understand what you're saying is Barb Holleman
2 told you at some point in time, approximately 6 to 12
3 months after you became division chief, that your phone
4 was being recorded?

5 A. Yes.

6 Q. Did she tell you if there were any other phones being
7 recorded?

8 A. No.

9 Q. And do you have an independent recollection as to what
10 your phone number was when you were the division chief?

11 A. No.

12 Q. When you took the position of Chief of Police, going from
13 division chief to Chief of Police, did you keep the same
14 phone number that you had when you were the division
15 chief, or did your phone number change?

16 A. No, my phone number changed.

17 Q. Okay. So you did not keep the same number. Whenever you
18 went to become the Chief of Police, you got a new phone
19 number?

20 A. Yes.

21 Q. Okay. Did you ever have any conversation with Tom Fautz
22 about your phone line being recorded?

23 A. No.

24 Q. Did you ever ask Tom Fautz why is my phone being recorded?

25 A. No.

1 Q. Were you ever told whether there were any other phone
2 lines that were being recorded besides yours?

3 A. No, not at that time.

4 MR. DIXON: Can we clarify what time you're
5 talking about?

6 MR. PFEIFER: When he learned from Barb --

7 MR. DIXON: When he became Chief?

8 MR. PFEIFER: No. When he learned from Barb
9 Holleman that his phone line was being recorded.

10 MR. DIXON: As the division -- as the chief of
11 the division, of the Uniform Division?

12 MR. PFEIFER: As the division chief of the patrol
13 division.

14 MR. DIXON: I think patrol and uniform are the
15 same thing. Right?

16 THE WITNESS: Uh-huh.

17 MR. PFEIFER: That's my understanding.

18 MR. DIXON: Thank you.

19 BY MR. PFEIFER:

20 Q. Let's go back just to make sure that we're clear. When
21 you learned from Barb Holleman that your line was being
22 recorded as division chief of patrol or the uniform
23 officers, did you at that point in time go to Tom Fautz
24 and inquire or question why the phone was being recorded?

25 A. No.

1 Q. Were you told by Barb Holleman why the phone line was
2 being recorded?

3 A. No.

4 Q. When you were the division chief, where was your office
5 located?

6 A. It was on the west side of the building, right next to
7 Chief Fautz' office.

8 Q. Okay. Same general area where the Chief of Police office
9 is?

10 A. Yes.

11 Q. Okay. When you were the division chief, did you have a
12 secretary?

13 A. We shared the secretary. I didn't have one personally,
14 no.

15 Q. Okay. Who did you share a secretary with?

16 A. Chief Fautz, Barb Holleman.

17 Q. So Barb Holleman was not only Chief Fautz' secretary, but
18 your secretary?

19 A. No, not exactly that way. She was in our secretarial
20 pool. She was the Chief's secretary, and I didn't have a
21 personal secretary. We just kind of -- when there was
22 something she needed, she serviced the whole west side of
23 the office area, but not particularly, say, my secretary.

24 Q. Okay.

25 A. She was the Chief's secretary.

1 Q. When Barb told you that your phone line was being
2 recorded, about 6 to 12 months after you became division
3 chief, did she tell you how long your phone line had
4 been -- yeah -- was being recorded?

5 A. No.

6 Q. When you were the division chief, would you use your phone
7 for private conversations?

8 A. Sometimes.

9 Q. Tell me, if you would, the circumstances which would cause
10 you to use your phone as division chief for private phone
11 conversations?

12 A. Well, my daughter may have called, "Hey, Dad, I'm going to
13 basketball practice," or, "playing tennis," and I would
14 say, "Fine." It was just general conversation.

15 Q. When you would have these private conversations with your
16 daughter, as you've indicated to me, or other people, and
17 the conversations were private in nature, did you have an
18 expectation of privacy?

19 A. I really didn't think about it, didn't even cross my mind.

20 Q. While you were the division chief, were you married?

21 A. No.

22 Q. Other than Barb telling you about 6 to 12 months after you
23 became division chief that your phone was being recorded,
24 do you have any knowledge or information as to whether
25 Barb told other people that their phone lines were being

1 recorded?

2 A. No.

3 Q. Did you ever question Barb or Tom Fautz at all as to
4 whether other individual phone lines were being recorded
5 besides yours?

6 A. No.

7 Q. Before being told by Barb Holleman that your phone was
8 being recorded, while you were the division chief, did you
9 have any knowledge or information as to whether there were
10 other phone lines in the South Bend police station that
11 were being recorded?

12 A. Yes.

13 Q. Tell me, if you would, what your knowledge and
14 understanding was before Barb Holleman told you your line
15 was being recorded as to lines that were recorded.

16 A. I think there was a lot of lines rumored to be recorded
17 around the police department. I think there were front
18 desk phones.

19 Q. Okay. Let me interrupt you. Don't talk to me at all
20 about -- or don't tell me for right now --

21 A. Okay.

22 Q. -- what was rumored to have been true in terms of the
23 recording of phone lines. Tell me, first of all, what you
24 knew in terms of the recording of other phone lines.

25 A. As the division chief?

1 Q. While you were the division chief, yes.

2 A. Front desk.

3 Q. Okay.

4 A. Front desk at the records department or front area.

5 Q. Are those two different areas or just one?

6 A. No. There's another area, records department.

7 Q. So the front desk, records, the front desk?

8 A. The front desk. There's front desk. Then you have
9 records right next to it.

10 Q. Okay.

11 A. Okay. Those two I knew for sure. I also knew that we had
12 the capabilities of taping lines like mine and, I believe,
13 the division chief. I don't really -- sure about the
14 service chief, didn't know. Knew that we had the
15 capabilities, or I believe we had the capabilities of
16 taping other lines. And I think those impressed those
17 other 20 lines we have at the police department.

18 Q. Were there any other lines that you knew were being
19 recorded when you became the division chief?

20 A. I believe I was told Jim Kyle -- or Eugene Kyle.

21 Q. Any other lines that you knew were being recorded when you
22 became division chief?

23 A. No.

24 Q. What about the 911 calls?

25 A. Yes, yes, the 911s.

1 Q. Okay. So when you became division chief, you knew the 911
2 calls were recorded, correct?

3 A. Yes.

4 Q. You knew the front desk calls were recorded, correct?

5 A. Yes.

6 Q. You knew the records calls were being recorded?

7 A. Yes.

8 Q. And you knew what the capabilities were of recording
9 calls, and that was approximately 20 lines could be
10 recorded, correct?

11 A. Yes.

12 Q. And you knew that Gene Kyle's phone line was being
13 recorded?

14 A. Yes.

15 Q. Okay. How did you know the front desk lines were being
16 recorded?

17 A. That was throughout years of working, I would just -- said
18 to everybody, the phone lines are recorded from one place
19 to another place, the phone lines are recorded.

20 Q. Okay. How did you know the records lines were recorded?

21 A. Same thing.

22 Q. How did you know the capabilities of recording up to 20
23 lines existed?

24 A. That was learned later as I became a division chief and a
25 Chief.

1 Q. Okay. Did you learn that once you became a division
2 chief, or did you learn it once you became the Chief of
3 Police?

4 A. Once I became the Chief of Police.

5 Q. So in terms of the capabilities of the recording of phones
6 at the South Bend Police Department, if I understand what
7 you're saying, you first learned the capabilities when you
8 became the Chief of Police?

9 A. Yes.

10 Q. How did you know Gene Kyle's line was being recorded?

11 A. That was later learned back when Jim -- later back when
12 Jim had switched our phone -- when Jim was leaving the
13 police department, we had, I believe, a conversation where
14 he said his phone line -- your phone line may be -- or he
15 talked about Kyle's phone being taped, I believe. I
16 believe that's where it come.

17 Q. Okay. Help me understand what you just said. Jim who?

18 A. Hassig.

19 Q. Okay.

20 A. He took my spot. And then once we had a conversation, I
21 don't know whether it was before or after he had left, I
22 had learned that Gene Kyle's phone had been taped.

23 Q. He took your spot as division chief of --

24 A... No. He left. We were -- me and Jim are very good
25 friends.

1 Q. Okay.

2 A. And I think he mentioned that Gene Kyle's phone had been
3 taped or was recorded, taped, recorded.

4 Q. This conversation that you're telling me, did this
5 conversation occur when Jim Hassig was leaving?

6 A. I believe so.

7 Q. When Jim Hassig was leaving, what position did you hold?
8 Were you a division chief, or were you --

9 A. Division chief, I was division chief.

10 Q. You've been doing a good job so far. Let me finish asking
11 before you start answering. Okay?

12 A. I'm sorry.

13 Q. So when Jim Hassig left and you had this conversation
14 where you say that he told you that Gene Kyle's line was
15 being recorded, that occurred when you were the division
16 chief?

17 A. Yes.

18 Q. Okay. What was Jim Hassig's position right before he
19 left?

20 A. Division chief.

21 Q. Okay. Of what?

22 A. Of the department, Uniform Division.

23 Q. So he -- you took his spot?

24 A. Yes.

25 Q. All right. And that's when you learned of Kyle's line

1 being recorded?

2 A. A little bit later.

3 Q. Okay. Did Jim Hassig tell you why Gene Kyle's line was
4 being recorded?

5 A. I believe for investigative reasons.

6 Q. Did Jim Hassig tell you who requested that Gene Kyle's
7 line be recorded?

8 A. I think it was Chief Fautz.

9 Q. So if I understand what you're saying, Jim Hassig told you
10 that Chief Fautz requested that Gene Kyle's line be
11 recorded?

12 A. Yes, as I remember.

13 Q. For investigation purposes?

14 A. I think for investigative purposes, for complaints, people
15 calling in complaining, those type of things, that they
16 would record those conversations if there was any problems
17 with officers, any problems with anything back there, it
18 would be recorded.

19 Q. Well, what was Gene Kyle's position at the time his line
20 was being recorded?

21 A. Detective chief.

22 Q. So correct me if I'm wrong in understanding what you're
23 saying. Jim Hassig is leaving as the division chief. He
24 tells you, either when he's leaving or sometime after
25 that, that Gene Kyle, his line is being recorded. Gene

1 Kyle was the detective chief, and Tom Fautz is the one
2 that said that Gene Kyle's line is being recorded for
3 investigation purposes in the event -- or because people
4 were calling and complaining?

5 A. No --

6 MR. DIXON: Hold on just a minute. I'm going to
7 object to that question because it calls for
8 speculation and there's lack of foundation as to
9 whether or not Darryl Boykins heard conversations
10 with Tom Fautz about the reasons that Tom Fautz put
11 the recording on the line.

12 So I'm going to ask you to rephrase the question
13 as it deals directly with conversations that Boykins
14 may have had with Fautz as to Fautz's reasons for
15 putting the line on. Otherwise, it calls for
16 speculation and hearsay. And we've made it very
17 clear earlier on that nobody wants speculative
18 answers. We want answers that are based on
19 first-hand knowledge.

20 MR. PFEIFER: Go ahead. You can answer.

21 MR. DIXON: No. I'm going to instruct him not to
22 answer that question. I'm going to ask you to re- --
23 to ask -- if you're going to ask him what Tom Fautz's
24 reasons were, you need to establish a foundation for
25 it. If you're going to ask him what Jim Hassig told

1 him Tom Fautz's reasons are, I'm going to instruct
2 him not to answer because it's hearsay and it lacks
3 foundation.

4 MR. PFEIFER: Are you refusing to answer that
5 question?

6 MR. DIXON: I've instructed him not to answer the
7 question.

8 MR. PFEIFER: Are you refusing to --

9 MR. DIXON: If you want to certify it, go ahead
10 and certify it.

11 MR. PFEIFER: Are you refusing to answer that
12 question?

13 MR. DIXON: Yes, he's refusing to answer the
14 question.

15 MR. PFEIFER: He has to say he's refusing --

16 MR. DIXON: I don't think he even understands
17 what it means to refuse to answer a question in this
18 context. So I'm going to explain it to my client.

19 What it means is that he's going to certify the
20 question for a judge to take a look at the question
21 and make that determination. So I'm instructing my
22 client not to answer the question. If you want to
23 have it certified, certify it and let's move on.

24 BY MR. PFEIFER:

25 Q. Are you refusing to answer that question?

1 A. Upon my attorney's advice, he advised me not to.

2 MR. PFEIFER: Okay. Would you certify that
3 question.

4 MR. DIXON: I'm going to ask for a five-minute
5 break. We're between questions. Thanks.

6 (Recess taken.)

7 VIDEOGRAPHER: Please continue.

8 BY MR. PFEIFER:

9 Q. When Barb Holleman told you that your phone as the
10 division chief in charge of uniform and patrol officers
11 was being recorded, did she tell you that that was being
12 recorded for investigative purposes?

13 A. No.

14 Q. When you heard about Gene Kyle's phone being recorded,
15 were you told that his line was being recorded for
16 investigative purposes?

17 A. Yes.

18 Q. Were you told who was being investigated?

19 A. No.

20 Q. What did you understand in terms of who was being
21 investigated?

22 A. I don't believe it was who being investigated. It was
23 complaints and calls that would come in, that would come
24 in where, let's say, someone called somebody and reported
25 something against an officer, that's what that phone was

1 used for, to record it, to make sure it was accurate what
2 the person was saying, not to investigate a particular
3 officer.

4 Q. So if I understand what you're saying, and correct me if
5 I'm inaccurate in my understanding, you were told that
6 Gene Kyle's phone was being recorded. He was the
7 detective chief or the chief of detectives?

8 A. Yes.

9 Q. And there were complaints that were coming in about --
10 from people about the way detectives were or weren't doing
11 their job?

12 A. No. I don't want to speculate on part. I said it was for
13 investigative purposes because of that, not particularly.
14 There was a lot of things that could be related to that.
15 But it wasn't particularly because of this complaint or
16 this complaint. They set it up so if someone called,
17 someone called and there was some kind of complaint, or
18 even if it was something else, a call-in and they said,
19 "Did you ever get a call on this person," there would be a
20 recording device that he could go back to and reflect it.

21 Q. Okay. At that time, that is when you were the division
22 chief, the Detective Bureau had their own secretary,
23 correct?

24 A. Yes.

25 Q. And if the public wanted to call and talk to a detective,

1 the number that was in the phone book for them to call was
2 the Detective Bureau, and that call would go through to
3 the secretary of the Detective Bureau, correct?

4 A. Yes.

5 Q. So the only way someone could call Gene Kyle directly is
6 if that someone who is making the call knew Gene Kyle's
7 direct personal phone line, correct?

8 A. I believe you had front desk, you had a lot of people that
9 could go through there and get your phone number. I can't
10 be for sure, but I know there was other ways to get your
11 phone number directly, besides going through the
12 secretary.

13 Q. Okay.

14 A. We had a voicemail system.

15 Q. So if someone called the front desk and said, "Can I have
16 Gene Kyle's direct phone line," would the front desk then
17 be authorized to give that phone number out?

18 A. I don't have all that thing. I don't have that
19 information. You'd have to talk to somebody on the policy
20 of that.

21 Q. Okay. When you were division chief, did you ever -- after
22 you learned that your phone was being recorded, did you
23 ever inquire as to whether anyone was listening to the
24 recordings of your phone conversations?

25 A. No.

1 Q. Did you have any fears or concerns that someone might be
2 listening to a recording of your phone conversation?

3 A. No.

4 Q. Why not?

5 A. Just didn't -- I just didn't -- we've been in the police
6 department for almost 29 years. A lot of phones you walk
7 around you believe might have been, that you just talk;
8 you don't think about it. You just pick up the phone and
9 talk.

10 Q. Okay. You then became the Chief of Police, I think it was
11 December of 2007?

12 A. Yes, sir.

13 Q. Tell me, if you would, the circumstances that led you to
14 become the Chief of Police.

15 A. I was selected by the mayor to take that position.

16 Q. And was that following Tom Fautz's retirement?

17 A. Yes, sir.

18 Q. When you were selected by the mayor to become the Chief of
19 Police, did you sit down with Tom Fautz, who was the then
20 Chief or the retiring Chief, and talk about any procedures
21 or protocols that the Chief of Police followed since you
22 were going to become the Chief of Police?

23 A. No. There were some things he mentioned, but I couldn't
24 tell you. You'd have to ask him.

25 Q. I'm asking what he told you.

1 A. What he told me is -- what I can remember, I don't
2 remember we sitting down talking in a very long period of
3 time about the different parts of the job a little bit.

4 Q. When you became the Chief of Police --

5 A. Yes.

6 Q. -- were you provided a list of the phone lines that were
7 being recorded, at least as of your first day of being the
8 Chief of Police?

9 A. No.

10 MR. DIXON: Just a clarification of that, I think
11 what he's understanding is was that presented to him
12 on his first day of Chief of Police. So I just want
13 to clarify that for you because I think that
14 everybody knows that there was -- there did come a
15 point where there was a presentation of that
16 information.

17 MR. PFEIFER: Everybody doesn't know that. And I
18 guess if you want to be sworn in, Tom, we can
19 question you too.

20 MR. DIXON: Just trying to help you out, Dan.

21 BY MR. PFEIFER:

22 Q. Did you understand my question?

23 A. Okay. Now, rephrase the question, yes. Could you repeat
24 it again?

25 Q. When you became the Chief of Police, were you provided a

1 list of phone lines that were being recorded, at least as
2 of your first day of being the Chief?

3 A. Yes.

4 MR. DIXON: I'm going to ask for clarification on
5 that. Are you talking about was he presented that
6 information on his first day, or was he presented
7 with the information of the lines that were being
8 recorded as of the first day?

9 BY MR. PFEIFER:

10 Q. Did you understand my question?

11 MR. DIXON: I'm asking for clarification of it.

12 Q. Captain Boykins, did you understand the question?

13 A. Yes, I think I understand part of the question. Could you
14 repeat it again?

15 Q. Sure.

16 A. For clarification.

17 Q. Certainly.

18 A. So me and my attorney can agree to what you're saying.

19 Q. You seem to be understanding --

20 A. I'm here -- this is my legal representation, sir.

21 Q. When you became the Chief of Police, were you provided a
22 list of phone lines that were being recorded, at least as
23 of the first day that you were the Chief of Police?

24 A. As far as for the first day? I later was given that
25 information, but not on the first day --

1 Q. Okay.

2 A. -- of me taking my position as the Chief.

3 Q. At some point in time after becoming the Chief of Police,
4 were you provided a list of phone lines that were being
5 recorded?

6 A. I don't know if I was provided a list, but I was told. I
7 probably did get a list, but I can't be sure. So, again,
8 I can't answer that correctly.

9 Q. When were you told, approximately?

10 A. I can't answer that. I don't --

11 Q. Was it within the first week of becoming the Chief of
12 Police?

13 A. I can't be that precise. It was at some time during the
14 course of the first year I was presented with that. I'm
15 pretty sure I was.

16 Q. Okay. So within the first year of you becoming the Chief
17 of Police, you were provided information as to the phone
18 lines that were being recorded, correct?

19 A. Yes.

20 Q. Okay. Was that information in the form of a written piece
21 of paper identifying the phone numbers that were being
22 recorded?

23 A. No, not that I --

24 Q. Was that information given to you verbally?

25 A. Yes.

1 Q. Who gave you that information?

2 A. That would be Karen DePaepe or Barb Holleman could have
3 relayed it, depending on how busy I was when that came up.

4 Q. So sometime within the first year, either Karen DePaepe or
5 Barb Holleman gave you information which told you the
6 phone lines that were being recorded, correct?

7 A. Yes.

8 Q. Okay. Was there a reason why they gave you that
9 information?

10 A. I think it was policy that was set up through Chief Fautz
11 that there would be -- that information would come
12 directly to the Chief's office.

13 Q. When you say policy that was set up by Chief Fautz, tell
14 me what you mean by that.

15 A. It's not a written policy. I think it was more or less a
16 verbal policy, something past practice more or less than
17 actually something that was written down directed.

18 Q. Okay. So what was the verbal policy or the past practice
19 that you were told in terms of what Chief Fautz had set up
20 while he was the Chief?

21 A. Well, there wasn't no policy written. It was verbal, as I
22 said. And it was nothing setting down that this person is
23 going to do it or this person was doing it and I was going
24 to do it next. It was just a policy that he said they
25 just checked. And that's what I got from it. You'd have

1 to ask Chief Fautz that. I can't answer that question for
2 him.

3 Q. What is your understanding as to what the policy was is
4 what I'm asking.

5 A. The policy was that the Chief makes the decision on which
6 taped lines.

7 Q. So if I understand what you're saying, and tell me if I'm
8 wrong, at some point in time, within the first year of you
9 being the Chief of Police, either Karen DePaepe or Barb
10 Holleman come to you and tell you phones that are being
11 recorded, phone lines that are being recorded; and that
12 was because of a verbal policy or past practice that was
13 set up by Chief Fautz where the Chief makes the decision
14 as to which lines are going to be recorded. Is that what
15 you're telling me?

16 A. Yes. But it was Chief Fautz's pattern that I was
17 following. I don't know what the Chiefs before that had
18 done. This is just what I'd done. I followed what he had
19 set up as far as verbal policy from what I was instructed
20 or what I was learned to do.

21 Q. Okay. So what you're telling me, if I understand what
22 you're saying, is Chief Fautz had this policy in place.
23 And it was Chief Fautz who set this up or Chief Fautz who
24 did this. His policy was to make a decision as to which
25 phone lines were going to be recorded. That was his

1 policy or practice?

2 A. This was a policy that was followed from Chief Fautz.

3 What I'm saying is when Chief Fautz left, this was the
4 policy I followed. It was exactly the same thing that he
5 did verbal, or whatever, verbatim, that's what we
6 followed. I can't say he created that. But this is the
7 pattern that we followed, and that's what I did. This is
8 what he did the last year. This is what I did when I
9 became my first year. I followed that same pattern.

10 Q. So if I understand what you're saying, Chief Fautz
11 followed this practice. Whether he set it up or not, you
12 don't know. But Chief Fautz followed a practice of making
13 a decision as to which phone lines would be recorded. And
14 when you became the chief, you followed that policy?

15 A. Yes.

16 Q. Did you learn that policy, that is the Chief -- the policy
17 that Chief Fautz followed, from Chief Fautz, Karen
18 DePaepe, or Barb Holleman?

19 A. I think it was just a pattern through Karen and the Chiefs
20 and back and forth. It wasn't no standard. It was this
21 is what we do. I think they came by every year and asked
22 do you want anything changed. Now sometimes it was Karen.
23 Sometimes Barb would come in and say something. Chief
24 Fautz never came in and say, "Darryl, this is what we're
25 going to do," and back and forth.

1 He had his own -- this is what his verbal policy was.
2 And you'd have to ask Karen what the radio communication
3 policy was. She could actually have a policy that could
4 have defined that, but I never seen it.

5 Q. My question to you, Captain, is this: You have told me
6 that at some point in time within the first year of you
7 becoming the Chief of Police, you were approached either
8 by Karen or Barb and given a verbal list of phone lines
9 that were being recorded; and this was being done based
10 upon the practice that Chief Fautz followed as to making
11 decisions which lines were being taped, correct?

12 A. Correct.

13 Q. Did you know what Chief Fautz's policy -- this policy that
14 you're talking about -- was because Chief Fautz told you,
15 Karen DePaepe told you, or Barb Holleman told you? Who
16 told you about this policy?

17 A. The policy, it came towards me between Karen and probably
18 Barb. They presented it to me.

19 Q. So one of the two of them, or both, would have said to you
20 here is the policy or practice that Chief Fautz followed,
21 and we're going to give to you the phone lines that are
22 being recorded. Is that fair?

23 A. Yes, I believe that's fair.

24 Q. --Okay. And that all occurred sometime within the first
25 year of your being the Chief of Police?

1 A. Yes, sir, I believe so.

2 Q. Okay. When that occurred, what did you learn at that time
3 as to the phone lines that were being recorded, which
4 ones?

5 A. We learned that there was possibly 20 lines in the
6 department. There was a set of recording lines that was
7 recorded of phones with, I believe -- I believe the front
8 desk was recorded. I believe 911 lines was recorded. I
9 believe there was a line in records that was recorded. I
10 believe both secretaries' lines were recorded. I believe
11 Gene Kyle's was recorded, and I believe there was on some
12 demand the Chief's and maybe the division chiefs was
13 recorded; but it was on demand only.

14 I don't believe the service chief's was recorded, and
15 I'm not sure -- those are the ones I remember of being
16 recorded at that time. And, like I said, the Detective
17 Bureau phone.

18 Q. When you say the division chiefs' lines were recorded on
19 demand, what do you mean by that?

20 A. If you wanted your own line recorded. If you wanted your
21 own line recorded, you could say, yes, I want that
22 recorded for whatever reason. So you might have come up
23 to -- you could ask.

24 Q. Okay. And if I understand what you're saying, you learned
25 this information that you've just told me from Karen

1 and/or Barb or both of them because that was the policy or
2 practice that Chief Fautz followed?

3 A. Yes.

4 Q. Okay. Were you told anything by Barb or Karen as it
5 pertains to Chief Fautz's policy that you followed that
6 any private line coming into the South Bend Police
7 Department could be recorded without telling the person
8 who used the private line?

9 A. No. That conversation never came up.

10 Q. As the Chief of Police, do you believe that you had the
11 authority to record any phone line at the South Bend
12 Police Department?

13 A. I believe we had a policy that there was no exception of
14 privacy and that for investigative purposes or information
15 that was needed, we could record. That was not so much
16 the person who had the phone in their line, but other
17 people who were calling in and possibly making a complaint
18 or in that such matter.

19 Q. I believe my question was this: As the Chief of Police,
20 when you were the chief, did you believe that you had the
21 authority to record any phone line coming into the South
22 Bend Police Department?

23 A. No. I never had that question, never thought of do I have
24 the power to put everybody's phone on. No, I didn't even
25 come across that.

1 Q. I'm not talking about everybody's phone line. I'm talking
2 about anybody's phone line.

3 A. Only if there was some kind of investigative or criminal
4 need for it.

5 Q. Okay. So if I understand what you're saying, as Chief of
6 Police, the only way that you could direct someone to
7 record a phone line is if there was some type of criminal
8 investigation that was ongoing internally?

9 A. Yes, something where I'd have to investigate, State Police
10 come in and want something, something where a crime or
11 something had been committed, not just to listen just to
12 listen.

13 Q. Okay.

14 MR. DIXON: I need to take another break. Sorry.

15 (Recess taken.)

16 VIDEOGRAPHER: Please continue.

17 BY MR. PFEIFER:

18 Q. And if there was an investigation that was being
19 undertaken by the South Bend Police Department which would
20 cause an officer's private line to be recorded, then that
21 officer would have to be told that there was an ongoing
22 investigation; isn't that correct?

23 MR. DIXON: I'm going to object that that assumes
24 facts that are not in evidence and lacks foundation.

25 It hasn't been established that a particular line

1 would need to be -- that the policy was that a
2 particular line would need to be taped or would be
3 permitted to be taped for a criminal investigation,
4 for a specific criminal investigation.

5 BY MR. PFEIFER:

6 Q. You can answer the question.

7 A. Could you repeat it again?

8 Q. Sure. And if, in fact, a line was going to be recorded
9 because of a criminal investigation that was going to be
10 undertaken, as it relates to the person who was using the
11 line, one of the officers, then you would agree, would you
12 not, that you would have to tell the officer that there
13 was an ongoing investigation that was going on and that
14 the line was going to be recorded; isn't that true?

15 MR. DIXON: Sorry. I have to lodge my objection
16 again. That misstates his testimony. He never
17 testified that a line would be investigated of a
18 police officer.

19 Q. You can answer.

20 A. I'm going to go with my attorney.

21 MR. DIXON: Well, you can answer. He's
22 misstating your testimony. So you can answer the
23 question as best you understand his question, but
24 I've already lodged the objection that he's misstated
25 your testimony. That's not what you said.

1 Therefore, his question assumes facts that are not in
2 evidence and it lacks foundation. But if you
3 understand his question, even though it misstates
4 your testimony, you can try to answer the question as
5 best you can.

6 BY MR. PFEIFER:

7 Q. You can answer the question.

8 A. It's such a long question. Could you repeat it one more
9 time?

10 MR. DIXON: Why don't you have it read back.

11 A. Yeah, read it back.

12 Q. I know what I asked. You would agree, would you not, that
13 if you were going to record an officer's line because
14 there was a criminal investigation that was being
15 undertaken as to that officer, you would have to tell the
16 officer of the existence of the criminal investigation.
17 Do you agree with that?

18 A. Yes.

19 Q. When you were told by either Barb or Karen or both of them
20 the lines that were being recorded, you've told me one of
21 the lines that was being recorded was the front desk,
22 correct?

23 A. Yes.

24 Q. You've told me one of the lines that was being recorded
25 was the 911 calls?

- 1 A. The 911 calls, yes.
- 2 Q. You've told me that one of the lines that was being
3 recorded was records, correct?
- 4 A. Yes.
- 5 Q. Were you told that one of the lines that was being
6 recorded was Internal Affairs?
- 7 A. Yes, I knew that.
- 8 Q. Were you told that one of the lines that was being
9 recorded was then Chief of Detectives, Gene Kyle?
- 10 A. Yes.
- 11 Q. Were you told of any other lines that were being recorded,
12 or have we covered them all?
- 13 A. Are you talking about with my line as the division chief
14 and then the Chief was recorded or not?
- 15 Q. No. What I'm talking about is when Karen DePaepe or Barb
16 Holleman told you about a year after -- sometime within
17 the first year of you becoming the Chief of Police that
18 certain lines were being recorded.
- 19 A. Yes.
- 20 Q. I went through the lines that I thought you had said to
21 me --
- 22 A. Right.
- 23 Q. -- were being recorded, or at least what you learned?
- 24 A. Yes.
- 25 Q. Did I miss any?

1 A. I don't think so.

2 Q. Okay. When you had the conversation with Karen or Barb or
3 both of them, is that when you learned how the phone
4 system operated and what the capacity or capabilities were
5 of the recording of phone calls?

6 A. No, we didn't go that detailed at that time.

7 Q. At some point in time, had you learned that the
8 capabilities or capacity of recording phone lines when you
9 first became the Chief was that 20 lines could be
10 recorded?

11 A. Yes.

12 Q. Approximately when was it that you learned that that was
13 the capacity of the recording?

14 A. Probably -- just probably lately when we was going through
15 it as to almost the last year or so. I would have to say
16 within a year.

17 Q. Okay. What, if anything, do you know about how it is that
18 a phone line of a police officer can be recorded?

19 A. Repeat that again.

20 Q. Certainly. What, if anything, do you know as to the
21 capabilities or how it is -- let me start over.

22 What is it, if anything, that you know as to how one
23 goes about recording a phone line of a police officer?

24 A. No, I don't know that. I don't have the knowledge of
25 that.

1 Q. You don't have any knowledge as to how that happens?

2 A. How that would actually go in there and process and do it,
3 I don't knowledge of.

4 Q. Who does have that knowledge?

5 A. Karen.

6 Q. Okay.

7 A. Maybe.

8 Q. I'm sorry?

9 A. Never mind. Go ahead.

10 Q. Anybody else besides Karen?

11 A. I think probably Gary Horvath.

12 Q. Anybody else?

13 A. I'm not really sure. You'd have to ask them.

14 Q. Okay. So if you wanted to record somebody's phone line,
15 as the Chief of Police, how would you go about making sure
16 that something like that happened?

17 A. I don't know. I never did.

18 Q. Do you have any knowledge or information as to how it is
19 that you would do that if you wanted to, when you were the
20 Chief of Police?

21 A. No.

22 Q. Okay. Is it your testimony that Karen knows that
23 information?

24 A. She's more knowledgeable about that than I am, the
25 procedures to go through that.

1 Q. At any point in time, did you direct Karen DePaepe to
2 record phone lines of any officers?

3 A. No.

4 Q. At any point in time, did you direct Karen DePaepe to
5 continue to record phone lines of police officers after
6 officers requested that their phone line not be recorded?

7 A. No.

8 Q. At any point in time, have you ever listened to recordings
9 of any phone conversations that were recorded at the South
10 Bend Police Department?

11 A. Yes.

12 Q. Okay. Tell me about those circumstances.

13 MR. DIXON: I'm going to object to that. I think
14 that we're getting into some -- I'm going to instruct
15 my client not to answer that question because of the
16 concerns that were brought to my attention by the
17 U.S. Attorney's office about revealing information
18 with regard to what's on recorded tapes. So I'm
19 going to instruct him for that reason not to answer
20 the question. And if you have to certify it, go
21 ahead and certify it.

22 MR. PFEIFER: Just so you're clear, the question
23 is not what was the substance of the conversation.
24 The question was a follow-up question, have you ever
25 listened to phone conversations.

1 MR. DIXON: Right. And he answered yes to that.

2 MR. PFEIFER: And then the next question was tell
3 me about that. And I've not asked him to tell me
4 about the substance of the conversation. Let me do
5 this: Let me rephrase it and I'll get more -- I'll
6 be narrow in my questioning.

7 MR. DIXON: Okay.

8 BY MR. PFEIFER:

9 Q. You've told me that you have listened to conversations
10 that were recorded, correct?

11 A. Yes.

12 Q. Okay. Whose phone line was it that you listened to in
13 terms of the recording?

14 A. It was, I believe, the DB division chief's phone.

15 Q. DB division chief?

16 A. Yeah, captain phone -- captain's phone. Excuse me.

17 Q. Okay. The Detective Bureau division chief?

18 A. No, captain's phone.

19 Q. The captain of the Detective --

20 A. There was a switch. The phone line I listened to was
21 supposed to go -- was to the captain, the captain's phone.

22 Q. Okay.

23 A. The division chief really, division chief, but the
24 captain. It was a switch in phone lines.

25 Q. Let me ask you this: Do you know the phone number of the

1 recording that you listened to?

2 A. No.

3 Q. Okay. At any point in time, did you ever listen to
4 recordings of phone line conversations for Brian Young?

5 A. Yes.

6 Q. Okay. At any point in time, did you ever listen to phone
7 conversations of recordings of Steve Richmond's phone
8 line?

9 A. No.

10 Q. When you listened to the recordings of the phone
11 conversations of Brian Young -- and I don't want to know
12 what the substance is -- what I want to know is who was a
13 party to the conversations that you listened to.

14 A. I believe Wells.

15 Q. Okay. Dave Wells?

16 A. Yes.

17 Q. Is that the only person?

18 A. I only listened to one tape. That was it.

19 Q. Okay. So if I understand your testimony, you listened to
20 one tape. It was Brian Young's phone line that was being
21 recorded, and it involved conversations between Dave Wells
22 and Brian Young. Is that fair?

23 A. Yes.

24 Q. And is it your testimony that you did not listen to any
25 other recorded phone conversations?

1 A. Yes.

2 Q. Now, Brian Young at the time the line was being recorded
3 held what position?

4 A. Captain.

5 Q. He was not the chief of detectives, was he?

6 A. No.

7 Q. You would agree, would you not, that his phone line should
8 not have been recorded?

9 A. No.

10 Q. No, you wouldn't agree with that?

11 A. No. I'm just saying it was for the division chief's phone
12 to be recorded. Division chief phone to be recorded.

13 Q. When you listened --

14 MR. SULLIVAN: I'm confused. I don't know -- can
15 you go back through that?

16 BY MR. PFEIFER:

17 Q. Yeah. When you listened to the phone conversation, you
18 knew that Brian Young was not the division chief?

19 A. Yes.

20 Q. When you listened to the conversation and you knew it was
21 Brian Young and you knew he wasn't the division chief,
22 what, if anything, did you do to stop the recording of his
23 phone line?

24 A. At what time? It changed what we already had set up.

25 Q. Once you listened -- actually, that raises a good

1 question. Let me ask you this: When did you listen to
2 the recorded conversation between Brian Young and Dave
3 Wells?

4 A. It had to be late 2011, like I think sometime in November
5 or December or sometime in that area there.

6 Q. Was it -- excuse me. I interrupted you, and I'm sorry.
7 Were you done?

8 A. No. Go ahead.

9 Q. Okay. Was it during the period of time in between when
10 Mayor Buttigieg was elected, but before he was sworn in?

11 A. I think before he was sworn in, and I can't be sure.

12 Q. But the election had already taken place, and he had been
13 elected mayor?

14 A. Close to it, close to it. I can't be certain of that, the
15 timetable.

16 Q. So at that point in time, when you listened to the
17 recording of the conversation between Brian Young and Dave
18 Wells in the November/December timeframe of 2010 or '11 --

19 A. No.

20 Q. Excuse me, '11?

21 A. No, '11.

22 Q. Okay. You knew at that point in time that Brian Young was
23 not a division chief, and he wasn't the Chief of
24 Detectives, correct?

25 A. Yeah, correct.

1 Q. When you listened to the phone recording, did you reach,
2 in your mind, a conclusion that Brian Young's phone line
3 is being recorded and it shouldn't be recorded?

4 A. No.

5 Q. Should Brian Young's phone line have been recorded?

6 A. If it's in our policy the way we had it set up, no, his
7 line shouldn't have been recorded.

8 Q. Okay.

9 A. I think there was a mixup somewhere in the lines.

10 Q. So what you're saying is there was a mixup somehow
11 somewhere in the lines, and Brian Young's --

12 A. Well, I probably shouldn't --

13 MR. DIXON: Let him finish his question.

14 BY MR. PFEIFER:

15 Q. And Brian Young's phone line should not have been
16 recorded. It was Steve Richmond's phone line that should
17 have been recorded. Is that what you're saying to me?

18 A. I'm saying the division chief phone line, that phone
19 number should have been recording to the division chief.
20 That's where it was set up. That's the way it was set up.

21 Q. Okay. And Steve Richmond was a division chief?

22 A. Yes.

23 Q. So if I understand what you're saying, Brian Young's phone
24 should not have been recorded. Instead, it should have
25 been Steve Richmond's phone recorded?

1 A. Yes.

2 Q. And that's based upon what policy?

3 A. That's where Chief Fautz had set up for the investigative
4 unit, DB.

5 Q. When you realized that Brian Young's phone line was being
6 recorded and it should not have been recorded, what if any
7 steps did you take to tell Karen DePaepe, Gary Horvath, or
8 whoever, hey, stop recording this line, this line should
9 not be recorded?

10 A. No, I didn't do that.

11 Q. You took no steps?

12 A. No steps on that.

13 Q. Why not?

14 A. Well, not at that time. Why not?

15 Q. Yeah.

16 A. Because really I didn't understand the process of it, the
17 process of it. I knew there was a detective chief's
18 position that we recorded. That came through Chief Fautz.
19 But they had already switched numbers and changed. So I
20 kept it remaining the same as it was, and I didn't change
21 it. No one requested it to be changed.

22 Q. Well, when you realized that Brian Young's phone line was
23 being recorded, did you say to Karen DePaepe, hey, we're
24 recording the wrong phone line here, we're supposed to be
25 recording Steve Richmond's phone line based upon your

1 understanding of Tom Fautz' policy?

2 A. No. We never had that conversation.

3 Q. Why not?

4 A. We just never did.

5 Q. Once you realized that his phone was being recorded and it
6 was not the line that should have been recorded, did you
7 go and tell him that, hey, your line's been recorded and
8 it shouldn't have been recorded, we'll stop if you want us
9 to?

10 A. No.

11 Q. Why not?

12 A. Again, I would say simply because we didn't get to that
13 point with it. We -- from my understanding, the line had
14 broke down. Without getting into any detail, the line had
15 broke down. And that's what I was getting the information
16 from, the information of what we was talking about, not to
17 the point of whether I was going to record his phone or
18 his phone. We kept that same policy that we've had
19 before. Now, maybe I should have caught it, but I didn't.

20 Q. Why had the line broken down?

21 A. I have no idea. You'd have to --

22 Q. What broke down on the line?

23 A. Karen would have to answer that question. She's more in
24 that. I don't have the knowledge of that.

25 Q. Well, Karen told you something's wrong with the line or

1 the line broke down?

2 A. That's all, yeah, simply, and that was it.

3 Q. Did she tell you the line broke down here, you should come
4 listen to this?

5 A. No. She contacted me later.

6 Q. Okay. So I guess my question then is what is it that
7 caused you to go listen to the recording of Brian Young's
8 phone line in conversations that he had with Dave Wells?

9 A. It was brought to my attention.

10 Q. What was brought to your attention?

11 A. The conversation. I did not order the conversation. I
12 mean, excuse me, it was brought to my attention of these
13 recordings.

14 MR. DIXON: I have to -- again, I have to -- I
15 think we're getting into this area where you're
16 talking about the potential conduct -- or content of
17 the tapes.

18 MR. PFEIFER: I'm staying away from the content.

19 MR. DIXON: But I think the question you're
20 asking him is basically going to that issue, what is
21 it that caused you to listen to the tapes.

22 MR. PFEIFER: Well, he can say that. He doesn't
23 need you to say that.

24 MR. DIXON: No, I don't need to say it, but we
25 need to make sure that we're not walking into

1 territory where we have to shut down for Title 18
2 purposes. So I'm just trying to make sure that we go
3 in the right direction so that you can get the
4 information that you're asking, but that he's not
5 answering questions in a way that isn't what you're
6 asking or is inadvertently getting into that area.

7 MR. PFEIFER: You mean walking into the territory
8 of disseminating --

9 MR. DIXON: The content of the tapes.

10 MR. PFEIFER: -- the content of an illegally
11 recorded phone conversation?

12 MR. DIXON: Well, no. I'm not saying that they
13 were illegally recorded. I'm just saying that we
14 don't want to get into that area at this juncture.
15 We want the federal court to answer that question for
16 us.

17 BY MR. PFEIFER:

18 Q. My question to you is this -- and I think I understand
19 what you're saying, so I'm going to kind of preface this
20 to keep this very narrowly defined.

21 Are you telling me that what caused you to listen to
22 the conversation between Brian Young and Dave Wells,
23 someone saying to you, hey, you should listen to this?

24 A. Not so much as listen to this. No, I'd have to disagree
25 with you on that.

1 Q. Okay. What then caused you to listen to the conversation
2 between Brian Young and Dave Wells that had been recorded
3 when Brian Young's phone line shouldn't have been
4 recorded?

5 A. There were -- let me see how to say this. There were
6 things on that taped line, or what you call the phone
7 line, that was disturbing. This was told to me, was
8 disturbing.

9 Q. Okay. And --

10 A. You know, without getting -- it's kind of hard to say
11 without telling you what --

12 Q. I don't want you to tell me what you were told was said.
13 Someone brought to your attention someone's belief that
14 there was something disturbing on a phone line. Is that
15 what you're saying?

16 A. Yes.

17 Q. Who is the "someone"?

18 A. Karen.

19 Q. Okay. Why was Karen listening to the conversations?

20 MR. DIXON: I'm going to object. That calls for
21 speculation. He can't -- if you want to ask him if
22 he ordered her to listen to the conversations, you
23 can. But other than that, that's a question for
24 Karen to answer.

25 MR. PFEIFER: You can answer the question.

1 MR. DIXON: If you know the answer.

2 MR. STESIAK: He should only answer any question
3 he knows the answer to.

4 MR. DIXON: Well, that's fine. We're getting
5 back to --

6 MR. PFEIFER: He doesn't need coaching from you,
7 Tom.

8 THE WITNESS: Repeat it again so I make sure
9 we're understanding, we're doing the right question
10 again.

11 MR. PFEIFER: Sorry, brain freeze. Can you
12 repeat it?

13 (Read back.)

14 A. I can't answer that for you. Karen would have to answer
15 the question.

16 BY MR. PFEIFER:

17 Q. Did Karen ever tell you why she was listening to the
18 conversations?

19 A. She said the line -- there was a malfunction in the line.

20 Q. Okay. And was it this particular line that there was a
21 malfunction in, or was there a malfunction in all of the
22 lines?

23 A. I can't tell you that. Karen would have to testify on
24 that.

25 Q. Okay. But at least there was a malfunction in this line,

1 and that's why she was listening to the tapes?

2 A. What I was told.

3 Q. That's what she told you?

4 A. Yes.

5 Q. Okay. At any point in time while you were the Chief of
6 Police, did you ever order her to listen to phone
7 conversations that were recorded?

8 A. No.

9 Q. At any point in time while you were the Chief of Police,
10 did you ever order her to listen to recordings of phone
11 conversations where the phone lines were being recorded?

12 A. No.

13 Q. As the Chief of Police, you said that you were told that
14 there was some type of malfunction or breakdown in the
15 phone lines, or words to that effect, correct?

16 A. Yes.

17 Q. Okay. But as the Chief of Police, what, if anything, was
18 ever done to repair any malfunction that had taken place
19 on these phone lines?

20 A. Again, that's not my expertise, and that was Karen's
21 division.

22 Q. As the Chief of Police, didn't you want to know what was
23 going on?

24 A. Yes, I do. But I do not have the knowledge to answer that
25 question the way you're asking me.

1 Q. At any point in time, did Karen ever tell you what the
2 malfunction was?

3 A. She said in phone lines.

4 Q. Did she tell you specifically what the malfunction was?

5 A. No.

6 Q. Did she -- did you direct her or order her to have the
7 phone lines repaired?

8 A. I'm assuming she was -- that's what she was doing,
9 repairing the lines.

10 Q. Okay. Is that -- that's not my question. My question is
11 at any point in time did you direct her to get the phone
12 lines repaired?

13 A. No.

14 Q. At any point in time, did you learn that not only was
15 Brian Young's phone being recorded, but Steve Richmond's
16 line was also being recorded?

17 A. No.

18 Q. As we sit here today, do you have any knowledge or
19 information as to whether his line was being recorded?

20 A. As far as I understood, no, his line was not -- was not
21 taped.

22 Q. You've told me in the one recording that you listened to
23 was a conversation between Brian Young and Dave Wells,
24 correct?

25 A. Yes.

1 Q. Was there anybody else besides those two that were on the
2 conversation that you listened to?

3 A. Are you talking about -- please explain that a little bit
4 further.

5 Q. Sure.

6 A. Explain that a little bit further.

7 Q. That's an example if you don't understand the question,
8 tell me, and I'll rephrase it.

9 You told me that you listened to a recording of a
10 conversation between Brian Young and Dave Wells, correct?

11 A. Right.

12 Q. And then it was Brian Young's phone that had been
13 recorded, correct?

14 A. Correct.

15 Q. Other than while you were listening to the recording,
16 other than hearing Brian Young's voice and Dave Wells'
17 voice, did you hear any other persons on the recording?

18 A. No.

19 Q. Before Steve Richmond became the division chief in charge
20 of the Detective Bureau -- that's the proper title,
21 correct?

22 A. Yes, sir.

23 Q. I think Rick Bishop held that position?

24 A. Yes.

25 Q. Why did you remove Rick Bishop from that position?

1 MR. DIXON: Objection, irrelevant. Doesn't have
2 anything to do with this lawsuit.

3 BY MR. PFEIFER:

4 Q. You can answer.

5 A. I have to do what my attorney --

6 MR. DIXON: No, you can answer that question. If
7 I have to instruct you not to answer, I'll instruct
8 you not to answer. It's just irrelevant, but you can
9 answer it.

10 A. He was caught lying about an incident, not being truthful.
11 And there were some other incidents with him just as well.

12 Q. Did you ever tell Steve Richmond that the reason you
13 removed Rick Bishop as the division chief in charge of the
14 Detective Bureau was because Bishop was backstabbing you?

15 MR. DIXON: Objection, irrelevant. If you want,
16 I can just make a standing objection to all of the
17 questions relating to Rick Bishop; or I can lodge an
18 objection with each question. So, your preference.

19 MR. PFEIFER: I don't care.

20 MR. DIXON: Okay. Then I'll just keep continue
21 -- I'll continue to object at that as being
22 irrelevant.

23 Q. Did you ever tell Steve Richmond that Rick Bishop was
24 talking about you behind your back?

25 A. No.

1 Q. When Steve Richmond became the division chief in charge of
2 the Detective Bureau, if you know, did he take the phone
3 line that he had from his prior position and take it with
4 him into the Detective Bureau?

5 A. I can't answer that. No, I don't know.

6 Q. You don't know one way or the other?

7 A. No. I know there was a phone line switch, but I don't
8 know which phone; and I learned that later.

9 Q. Do you know enough about the phone system at the South
10 Bend Police Department to know that if a person has a
11 particular line assigned to them, and then that person
12 receives a promotion or goes to a different position, even
13 in a different part of the building, that the person could
14 actually take with them their assigned phone line
15 regardless of where they are in the building?

16 A. Yes.

17 MR. WALTON: Excuse me. For clarification, Dan,
18 and I think it's going to help down the road, if you
19 would -- are you referring to the assigned telephone
20 number as opposed to the design -- to the line
21 because that can be significant later in terms of
22 terminology?

23 MR. PFEIFER: I'm talking -- thank you.

24 BY MR. PFEIFER: ..

25 Q. I'm talking about the assigned telephone number.

1 A. And your question again?

2 Q. Would your answer be the same if the question dealt with
3 an assigned telephone number?

4 A. Yeah, we all have assigned telephone numbers in our
5 positions.

6 Q. Okay. So Steve Richmond, before he became the division
7 chief in charge of the Detective Bureau, had an assigned
8 phone number to him in his position, correct?

9 A. Yes.

10 Q. Then when he became the division chief in charge of the
11 Detective Bureau, he could take his previously assigned
12 phone number with him to a different location in the
13 police department?

14 A. Yes.

15 Q. Do you know the procedure that has to be undertaken to
16 make that happen, or is that something that is outside of
17 your knowledge?

18 A. Outside of my knowledge.

19 Q. Okay. Have you learned that when Steve Richmond became
20 the division chief, he in fact -- in charge of the
21 Detective Bureau, he in fact took with him his previously
22 assigned telephone number?

23 A. Yes, I learned that later. Yes, I did.

24 Q. When Rick Bishop was the division chief in charge of the
25 Detective Bureau?

1 A. Yes.

2 Q. If you know, was his phone line recorded?

3 A. If it was a standard phone that was used that recorded,
4 yes, it was.

5 Q. His private phone, the line -- the number that was
6 assigned to him?

7 A. There was a number assigned to the chiefs. That phone
8 line was the phone line that was recorded. Not the
9 person, but the phone number and the division. That's
10 what that number was.

11 Q. Okay. Let me ask if you agree with this statement when
12 you were the Chief of Police: If there's no criminal
13 investigation going on about a particular officer, you
14 just want to record a particular person's phone line, do
15 you believe as the Chief of Police you had the authority
16 to record that phone line without telling the person that
17 the phone line was being recorded?

18 A. Just for lawful purposes, what we call law enforcement
19 purposes. That's the only reason I would do that. It
20 would have to fall within that scope.

21 Q. And that's the criminal investigation component?

22 A. Not all of it. It's not just the criminal complaints.
23 It's a law enforcement component. I could get a call
24 about I didn't like to see Officer Joe-Joe somewhere or we
25 got a criminal somewhere. It would be set up for law

1 enforcement purposes.

2 Q. But there's no written policy to that effect, correct?

3 A. No.

4 MR. PFEIFER: We've got ten minutes on the tape,
5 so let's take a break so she can switch the tapes.

6 MR. DIXON: Okay.

7 (Recess taken.)

8 (Exhibit 1 marked for identification.)

9 MR. SULLIVAN: Before the video gets started,
10 Angela, let's go back on the record. I just wanted
11 to clarify scope issues and the fact that there's
12 other claims and, of course, damage issues, etc.,
13 that are not going to be part of the scope of today's
14 deposition, but will be subject to further discovery.
15 And I wanted to make sure we were all on the same
16 page on that. I guess if we are, great. I just
17 thought we might put it on the record. I didn't
18 think that needed to be video'd.

19 MR. DIXON: Yeah, I mean, I think that's part of
20 my objecting to the -- to anything that was going to
21 the issue of the content of what's on the tapes is
22 that that's an issue that we're bifurcating discovery
23 to determine the legitimacy of the taping itself.

24 MR. SULLIVAN: Right.

25 MR. DIXON: And if that -- depending on the

1 ruling of that, then we get into those other issues.

2 MR. SULLIVAN: I'd just be more comfortable if
3 that was on the record. So are we on the record?

4 REPORTER: Yes.

5 MR. SULLIVAN: Was that all on the record?

6 REPORTER: That was all on the record.

7 MR. SULLIVAN: Good. Then I think we've done
8 that.

9 MR. PFEIFER: I think we all need to acquiesce in
10 your statement. And I do.

11 MR. WALTON: I agree.

12 MS. DUERRING: I agree.

13 VIDEOGRAPHER: Please continue.

14 BY MR. PFEIFER:

15 Q. Just so I'm clear, when Brian Young's phone line was being
16 recorded, he was not under any criminal investigation; is
17 that correct?

18 A. Correct.

19 Q. There was no court order that anyone had obtained
20 authorizing the recording of his phone line; is that
21 correct?

22 A. That's correct.

23 Q. There was no lawful enforcement purpose that was being
24 undertaken in the recording of his phone line; is that
25 correct?

1 A. Correct.

2 MR. DIXON: I'm going to have to again ask for
3 clarification. Are you asking about Brian Young's
4 phone itself, or the phone line that had been
5 previously --

6 MR. PFEIFER: I said phone line in my question.

7 MR. DIXON: Well, that -- see, that's a very
8 important distinction in all of this litigation. So
9 it has to continually be parsed out that you're
10 referring to it as Brian Young's phone line when, in
11 fact, the line that he was on was a line designated
12 for the chief of the Detective Bureau. And he was
13 not the chief of the Detective Bureau. So I think
14 that makes a big difference in the understanding of
15 the question that you're asking and also the
16 interpretation of the answers.

17 BY MR. PFEIFER:

18 Q. At some point in time, after you listened to the phone
19 conversation that you've told us about that was recorded
20 between Brian Young and Dave Wells, did you direct Karen
21 DePaepe to prepare cassette tapes of the recordings?

22 A. Yes.

23 Q. Why?

24 A. I felt I needed it for possibly later to confer with the
25 mayor. We talked about some things. And take a look at

1 it myself and actually listen it to myself because I
2 didn't listen to it when Karen had. I didn't -- this was
3 in my office. I felt I needed to have the privacy to look
4 at it, listen to it myself.

5 Q. Okay. I'm not tracking with you there.

6 A. You asked me about the tapes. Again, why did I make
7 copies of the tape?

8 Q. Right.

9 A. The copies of the tape was made so I could review them at
10 that point. And that's all that was at the beginning, to
11 review them; and that's what it was.

12 Q. Why did you need to take a copy to review them?

13 A. Unless I went down to where Karen was at and she played it
14 over whatever her apparatus she would to let me listen to,
15 that was the only way I would be able to hear it.

16 Q. Did you direct Karen to only prepare a cassette of this
17 one conversation that you've told us about that you
18 listened to?

19 A. No. I think there were other things that Karen had ran
20 across during her course of her job where the lines had
21 broke down.

22 Q. Well, okay. You've been -- you've told me that you only
23 listened to one conversation.

24 A. That's all I listened to.

25 Q. Okay. If you only listened to one conversation, then help

1 me understand why it is you directed her to prepare
2 cassettes of other conversations that you hadn't even
3 listened to.

4 A. No. That wasn't -- that's the thing there. There was
5 four or five tapes all at the same time. I listened to
6 one. I would not listen to the others at that point.

7 Q. Okay. Why wouldn't you listen to the others?

8 A. Probably --

9 MR. DIXON: Again, we're going to be getting into
10 the content of what he knows the content of those
11 tapes was. And I think at this juncture, it's
12 premature to get into that.

13 BY MR. PFEIFER:

14 Q. You can answer.

15 MR. DIXON: No, I don't want him to answer with
16 regard to anything dealing with the content of those
17 tapes.

18 MR. PFEIFER: I didn't ask him about the content
19 of the tape. I asked him why he didn't listen to the
20 other tapes.

21 MR. DIXON: You can answer that.

22 A. Okay. Because it probably would have bothered me a lot
23 worse than just one. I didn't want to take the chance of
24 reacting and getting upset and making a mistake by hearing
25 the other contents of what was on the tapes.

1 Q. So if I understand what you're saying, even though you
2 just listened to one tape or one recording of one
3 conversation between Brian Young and Dave Wells, you
4 directed Karen DePaepe to prepare cassettes of other
5 conversations --

6 A. No. Sorry. I interrupted you. I'm sorry.

7 Q. What am I missing, what you just said to me?

8 A. This was all at one time. It wasn't give me one more,
9 give me another one. It was all at one time that was
10 presented to me, that I was presented. It wasn't at
11 separate times.

12 Q. You're presented with tape-recordings?

13 A. Yes.

14 Q. You listened to one of them?

15 A. Yes.

16 Q. But you directed Karen to prepare cassettes of all of
17 them?

18 A. No. You're missing the point. They all came at the same
19 time. When I asked for the tapes, they all was done at
20 the same time. It wasn't give me more. It was all done
21 at one time.

22 Q. Well, let me ask you, when you listened to the tapes, or
23 the tape that you've told me about, did you listen to that
24 on a cassette?

25 A. Yes.

1 Q. So by the time you first listened to any conversation,
2 cassettes had already been prepared?

3 A. Yes.

4 MR. SULLIVAN: Dan, I apologize for interrupting.
5 I'm confused. Would you mind if I try and clarify?

6 MR. PFEIFER: Go right ahead.

7 MR. SULLIVAN: How else can you listen to
8 recorded conversations other than being made as a
9 separate cassette?

10 THE WITNESS: As far as I know, that was the only
11 way I can listen to it.

12 MR. SULLIVAN: So the only listening of
13 recordings you ever did was after it was placed on a
14 cassette?

15 THE WITNESS: Yes.

16 MR. SULLIVAN: Okay.

17 BY MR. PFEIFER:

18 Q. All right. Now I'm confused because -- help me
19 understand. You said earlier that the reason that you
20 requested the cassettes was so you could listen to them in
21 the privacy of your office, or words to that effect, as
22 opposed to having to go down to the radio room and listen
23 to them in the radio room?

24 A. No. I did them in my office. I did not listen to them
25 down at the radio room. I listened to them in the privacy

1 of my office when they were brought up to me.

2 Q. And when you listened to them, you listened to them on a
3 cassette?

4 A. Yes.

5 Q. Okay. So you had directed Karen DePaepe to prepare
6 cassettes of recordings that she wanted you to listen to,
7 or that you wanted to listen to?

8 A. Yes.

9 Q. Okay. But it's your testimony you only listened to one?

10 A. Yes.

11 Q. Did Karen DePaepe ever tell you about the substance of the
12 conversations that she had listened to?

13 A. Yes.

14 Q. And she did that in the form of an officer's report to
15 you, correct?

16 A. Yes, I believe so.

17 Q. You have in front of you -- or what the court reporter
18 will put in front of you as -- I think we have enough
19 copies -- Exhibit 1. Do you recognize that document?

20 MR. PFEIFER: Do you need one more?

21 THE WITNESS: Yes.

22 MR. STESIAK: She's got two.

23 MS. DUERRING: There's two different things here.

24 MR. STESIAK: That's just the second page.

25 MS. DUERRING: Okay.

1 MR. PFEIFER: Did we not get enough copies? Just
2 give him that one.

3 MR. DIXON: Thanks.

4 BY MR. PFEIFER:

5 Q. Have you had a chance to read Exhibit 1?

6 A. Yes.

7 Q. That is a report that you received from Karen DePaepe?

8 A. Yes.

9 Q. Is the information that's on Exhibit 1, that is -- let me
10 start over.

11 Exhibit 1 is actually a report that you would have
12 received after Karen DePaepe told you about the
13 recordings. Is that fair?

14 A. I don't think so. I think we had a previous conversation
15 with this before. I'm trying to remember. I think we had
16 previous conversation. I think it even says down here,
17 "...previously discussed that you had requested."

18 MR. DIXON: I think that's exactly what he asked
19 you.

20 THE WITNESS: Was it?

21 MR. DIXON: Yeah.

22 BY MR. PFEIFER:

23 Q. So your answer is?

24 MR. WALTON: Can we go off the record for a
25 second?

1 (Discussion held off the record.)

2 BY MR. PFEIFER:

3 Q. Is Exhibit 1 the only officer's report that you would have
4 ever received regarding someone listening to recordings of
5 phone conversations from lines that were recorded?

6 A. Yes. This is the only thing I've got of what Karen gave.

7 Q. I'm sorry?

8 A. Of what Karen presented.

9 Q. Okay. Now, let me direct your attention to the timeframe
10 of about August of 2011. I'm just trying to give you a
11 general timeframe. At some point in time in the
12 August/September timeframe of 2011, Phil Trent -- you know
13 Phil, don't you?

14 A. Yes.

15 Q. Has told us -- because everyone has a copy of this
16 statement -- that he went to Karen DePaepe and requested
17 that Brian Young's phone line no longer be recorded.
18 You're aware of that, aren't you?

19 A. No.

20 Q. You're not aware of that?

21 A. I remember there was a VoIP -- there was a meeting about
22 the new system, and it was discovered that there was --
23 there was a recorded line. And he had asked to get it
24 erased and take care of the line. I did hear that.

25 Q. Okay. And I assume you're aware that through Phil Trent's

1 statement, Karen DePaepe indicated to him that she was not
2 allowed to remove the recording because of an order from
3 you; is that accurate?

4 A. No. I don't know if she said that. That was something
5 you'd have to ask her.

6 Q. Let me ask you, did you ever order Karen DePaepe to not
7 remove the recording of the telephone line that was being
8 used by Brian Young?

9 A. No, I never ordered her not to. I was looking just --
10 here's what I'm getting confused with you again. Are you
11 talking about the line, the investigative line on that,
12 that's onto the phone for the investigative purposes that
13 we had already did, or to continue to listen to Brian
14 Young's phone without a change or without anything there?
15 Because that's what the whole point of the VoIP system was
16 coming in for, on demand. All that was changing, and
17 that's why they had the meeting.

18 Q. I'm talking about the recording of Brian Young's phone
19 line, 235-6031.

20 A. Right.

21 MR. WALTON: Well, that's a phone number, not a
22 phone line, just to clarify.

23 BY MR. PFEIFER:

24 Q. The recording of the phone line that is assigned the
25 number 235-6031, did you ever order Karen DePaepe to not

1 stop recording that phone line with that phone number
2 after Brian Young requested that the phone line with that
3 phone number not be recorded?

4 A. No. I would say no.

5 Q. Did you ever tell Phil Trent that you as the Chief of
6 Police were the only person with the authority to change
7 or initiate recording of telephone lines within the police
8 department?

9 A. I didn't tell Phil that. I told Phil that he had to go
10 through the chain of command whenever we was going to
11 erase the line. He had came in, and I'd have got
12 notification that he has to go through Karen, he has to go
13 through Gary, and he has to go through me before a change
14 or anything can be erased from the lines.

15 Q. My question is did you ever tell Captain Phil Trent that
16 you, the Chief of Police, Darryl Boykins, was the only
17 person with the authority to change or initiate recording
18 of telephone lines within the police department?

19 A. As I mentioned before, if you want me to give a yes or no,
20 that's not a yes or no answer. I did explain to Phil why,
21 the procedure he had to go to. Do I take the
22 responsibility of it? Yes, I would say yes in that case.

23 Q. Do you believe that you were the only person with the
24 authority to change or initiate recording of telephone
25 lines within the police department?

1 A. No, not without permission from me. I was the final
2 person, but they had to go through their chain of command.
3 It had to go through Karen. It had to go through -- had
4 to go through Gary. And then he would come back and
5 probably, I guess, would confer with me and let me know.

6 Q. Well, okay. Let's go up this chain of command. So Brian
7 Young, assume for the sake of my question in the
8 August/September 2011 timeframe, asks Phil Trent to stop
9 recording the phone line that is his private line bearing
10 number 235-6031. If I understand what you're saying, that
11 request has to go up the chain of command, correct?

12 A. It would have had to get that way. It had to follow that
13 course to get to me. I don't think nobody just came to
14 me.

15 Q. Tell me what the chain of command is.

16 A. It's not so much the chain of command. It's people with
17 the responsibility of the particular problem. Gary and
18 Karen are the people in charge of that program back there
19 in the communication room. That's why there's a division
20 chief a head of it. He also has the authority to change
21 and do that. It does not necessarily have to come to me
22 and follow that Gary/Barb thing there.

23 Gary can make that same decision because he is a
24 chief and he's a head of that room. I said if Gary wasn't
25 there and it came to me, yes, it would probably be my

1 decision to make.

2 Q. Well, you told me a minute ago, a few minutes ago, that
3 any request had to follow the proper chain of command.

4 A. Perhaps I was not properly explaining that at that point.

5 Q. Okay. So Phil Trent -- if Brian Young says to Phil Trent,
6 I want the phone number 235-6031, which is my private line
7 and number, I want that to no longer be recorded, what
8 does Phil Trent do?

9 A. Phil Trent could go to Gary and Karen and say I'm going to
10 put in a request for Brian Young's phone to be -- thing
11 there. She would say you're going to have to confer to
12 the Chief. And then Brian would have to go to Gary. Gary
13 is a head of them. Gary is a head of it, and he's also
14 Phil Trent's boss at that time.

15 If there was an issue with it, that Gary would
16 probably brought it to me and say do you have a problem
17 with this, they want this removed off their line. Then it
18 would be my decision to say yes or no.

19 Q. Okay. So based upon what you just said, you as the Chief
20 of Police have the final say as to whether a line will or
21 will not be recorded. Is that what you're telling me?

22 A. As well as I can explain it, yes.

23 Q. Did you ever tell Steve Richmond that you were waiting for
24 copies of recorded telephone conversations of the phone
25 number and phone line that were assigned to him?

1 A. No.

2 Q. Did you ever tell Steve Richmond that based upon listening
3 to phone conversations that had been recorded, you felt
4 like there were people that were backstabbing him?

5 A. No.

6 Q. Did you ever tell Steve Richmond that you felt like he was
7 backstabbing you based upon your listening to recorded
8 phone conversations?

9 A. No.

10 Q. Did you ever tell Steve Richmond that after four to six
11 weeks of Mayor Buttigieg taking office, you were going to
12 fire him because of listening to phone conversations that
13 caused you to believe that he was backstabbing you?

14 A. No.

15 Q. At any point in time, did you ever tell Brian Young that
16 his phone line bearing the phone number 235-6031 was being
17 recorded?

18 A. No. He came down to my office and talked about it, and it
19 might have been brought up. But as far as Brian is
20 concerned, we didn't have an in-depth conversation about
21 the phone lines.

22 Q. At any point in time, did you tell Steve Richmond that the
23 phone number for the phone line that was assigned to him
24 was being recorded?

25 A. No, not at that time, no.

1 Q. At any time did you tell him?

2 A. At any time we didn't have a conversation. Richmond was
3 not even in the taped line. He was not being taped. We
4 had very little conversation, if any. I don't -- we had
5 none, which is what you asked me.

6 Q. So is it your testimony that you had very little
7 conversation with Steve Richmond about the recording of
8 phone lines, either the line that was assigned to Brian
9 Young or the line that was assigned to Steve Richmond?

10 A. Right, we had very little conversation of that at all.

11 Q. Other than the one occasion that we've talked about so far
12 where you told us that you listened to a conversation that
13 was recorded, and the conversation was between Brian Young
14 and Dave Wells, did you listen to any other recorded
15 conversations?

16 A. No.

17 Q. You already told me -- and I'm not getting into the
18 substance of the conversation. But you've already told me
19 that Karen DePaepe told you about conversations that she
20 listened to, and that's what caused you to tell her to
21 give you the cassette tapes, correct?

22 A. Yes.

23 Q. Apart from Karen DePaepe telling you what she listened to
24 in the phone conversations, did any other person tell you
25 that he or she had listened to recordings of phone lines?

1 A. No, just Karen.

2 Q. Did you ever request Karen DePaepe to record Steve
3 Richmond's phone line?

4 A. No. No, sir.

5 Q. The day he became the division chief of the Detective
6 Bureau?

7 A. Not that I remember.

8 Q. Did you ever give Karen DePaepe a direct order to not
9 discuss with any person what she had heard or claims to
10 have heard in the recordings that she shared with you?

11 A. No.

12 Q. Do you have any knowledge or information as to any
13 officers that might have been applying for the Chief of
14 Police position after Mayor Buttigieg was elected, but
15 before he took office?

16 A. If any other police officers --

17 Q. Yes.

18 A. Who applied?

19 Q. Yes.

20 A. I think Richmond did. I heard Tim Corbett did. Now, all
21 this is rumor. I don't know whether this is sure or not.
22 This is all rumor. But that's what I had heard. Can you
23 hear me now?

24 And I believe I also heard -- that was pretty much
25 it. I don't think there was anybody else that was

1 supposed to get an interview besides Richmond. And I'm
2 going by basically just information I had heard. That's
3 it. Nothing I knew.

4 Q. Who had you heard that information from?

5 MR. DIXON: I'm going to object to this line of
6 questioning. This goes to the issue of the use of --
7 beyond the tapes, and that's a -- we're bifurcated.
8 We're focusing on the issue of the legality of the
9 taping itself, not on the use of the tapes. If the
10 taping itself is legal, then the use is legal. And
11 this is going into the second phase of the case,
12 which I believe has been set aside for a later time
13 for discovery. So I'm just going to object to that
14 and make an objection, and we can move forward.

15 BY MR. PFEIFER:

16 Q. I don't want to know substance of the tapes, the
17 conversations, what you heard or what you were told, the
18 substance. You've told me that you heard rumors that
19 Richmond and maybe Wells --

20 A. No. Go ahead. Sorry.

21 Q. Corbett --

22 A. I got confused. Go ahead.

23 Q. It's my understanding, I thought you said maybe Wells,
24 Corbett, and Richmond. Did I misunderstand you?

25 A. I didn't say Wells.

1 Q. Okay. Corbett and Richmond?

2 A. Uh-huh.

3 Q. Yes?

4 A. Yes.

5 Q. Okay. Did you learn of that fact from any person -- let
6 me start over because I got to ask the question in such a
7 way.

8 Who, if anyone, told you, apart from tapes, that
9 Richmond and Corbett were applying for the Chief's
10 position?

11 A. As far as for Corbett, none, if you're not counting the
12 tape. From that, Richmond, yes.

13 Q. Who told you that Richmond was applying for the Chief of
14 Police position?

15 A. That came up through gossip and also through a rollcall.

16 Q. Tell me what happened at rollcall.

17 MR. DIXON: I'm just going to make this a
18 standing objection to this line of inquiry so you can
19 just get done with it as soon as you can. I just
20 want to make sure it's on the record.

21 A. Anyway, it's not a particular person. It was just
22 somebody who simply said, hey, I heard Richmond is getting
23 an interview. Rumors are always around, floating around
24 the department. They have no way of -- they just fly like
25 that. That's how I heard it, through a rumor.

1 BY MR. PFEIFER:

2 Q. Okay. When you heard the rumor that Richmond was going to
3 apply for the Chief's position, did you confront him?

4 A. Yes, we talked about it. No, not when he was applying for
5 it, no. We never even talked. I didn't know he was
6 applying for it.

7 Q. At any point in time, did you talk to Steve Richmond about
8 his application to become the Chief of Police?

9 A. Yes.

10 Q. Tell me about that.

11 A. When earlier -- earlier when it was coming to a new
12 election, there was rumors that I was going to go to the
13 Kroc Center, that I was leaving the police department and
14 going to the Kroc. Steve had asked me if I could help him
15 prepare for a possible Chief position. I said fine. And
16 this was earlier, way before this even came close. It was
17 the earlier part of the year.

18 I said fine. He said I want to learn what you want
19 -- what you learned, and I want to get a variety from
20 reality because I would like to be Chief, if you're not
21 going to be the Chief, if you decide to leave. I told him
22 I wasn't leaving, but I said I had no problem. I would
23 have did the same thing to Gary. I would have did the
24 same thing to Walters if they had asked me. So I wasn't
25 surprised that Richmond wanted to become a Chief. That

1 didn't bother me.

2 He stated -- he came to my face. I didn't have no
3 problem with it. I wind up -- he wind up -- we wind up
4 talking hours in our office. Barb would actually call in
5 and try to get him out of the office because we been there
6 too long. We even became a standing joke that Barb, she
7 wants you out of the office. It almost became a standing
8 joke.

9 I took him to the Martin Luther King Center. He got
10 in front of the Men's Senior Club and gave a speech. I
11 went with him on that. He would show up at the boxing
12 center and tell me that if I don't become chief, he was
13 going to make sure the program goes because he likes the
14 program. We even went out to dinner to Outback and ate
15 and discussed it further.

16 So I had no problem with Richmond becoming the Chief
17 or thinking about becoming the Chief. He asked me would I
18 even give him a nod if it came up, if I left. And I said,
19 "Yeah, you do a great job." I didn't have any problem
20 with that. It wasn't until later when we went through all
21 this, all the time we had spent together talking about it.
22 I didn't have no problem if he had to sit there and say,
23 "Chief, guess what, I got an interview."

24 I felt very betrayed a little bit and very what you
25 call disillusioned of why didn't you say something. After

1 all this, you don't even say anything. I have to hear it
2 from somebody off the street or rumors. So that's where
3 we had our little talking conversation at because nothing
4 else pertained to it.

5 This is the only incident I really had with him, in
6 my mind, that we had that was related to anything. I was
7 just disappointed. I can't -- you know, after, you know,
8 I took him this, you asked me to do this; I didn't turn
9 you down, and I wouldn't have turned the other guys down.
10 But that's what happened.

11 Q. This conversation that you said that you had with Steve
12 Richmond where you told him that you were disillusioned,
13 when approximately did that conversation take place?

14 MR. DIXON: I'm going to object that that
15 misstates his testimony. I think he said he felt
16 disillusioned. I don't think he testified that he
17 said that he told Steve Richmond that he was
18 disillusioned.

19 A. No, I didn't tell him that.

20 BY MR. PFEIFER:

21 Q. The conversation that you had with Steve Richmond, when
22 you felt disillusioned, when did that take place?

23 A. I think just in January, I think early January possibly.

24 I'm not really a hundred percent sure of the date, but
25 early January.

1 Q. And did that conversation, was that one conversation,
2 multiple conversations?

3 A. I think it was twice we had the conversation.

4 Q. Did you ever have conversation with Lieutenant Lanchswerdt
5 about whether you could terminate Steve Richmond for being
6 what you perceived to be disloyal to him?

7 A. No. I cannot -- I cannot terminate anybody as far as it's
8 concerned. There's a chain that you have to go through.
9 I cannot terminate anyone.

10 Q. Did you ever tell Lieutenant Lanchswerdt that you were the
11 Chief of Police, you didn't need approval or permission
12 from the mayor, you could do what you wanted?

13 A. No, no.

14 MR. DIXON: Just want to make sure my continuing
15 objection is noted as continuing in this whole line
16 of inquiry.

17 BY MR. PFEIFER:

18 Q. Are you aware of the fact that Tom Fautz has said under
19 oath that at no point in time while he was the Chief of
20 Police that he ever ordered a division chief's phone lines
21 to be recorded?

22 A. No, I don't know.

23 Q. I'm going to read to you a question and an answer given by
24 Tom Fautz. And at the end I'm going to ask you whether
25 you agree or disagree with what Tom Fautz has said. Okay?

1 A. Yes, sir.

2 Q. There's a question: "Now, while you were the Chief of
3 Police, were you aware of the fact that there were certain
4 privacy rights that the police officers would have as
5 employees of the South Bend Police Department?" And his
6 answer was, "Yes." Next question: "Okay. While you were
7 the Chief of Police, was there ever any time when
8 telephones -- excuse me -- when police officers were told
9 that telephones were the property of South Bend Police
10 Department and that there was no right of privacy as it
11 relates to the use of phones?" Answer: "Not by me."
12 Question: "And you were the Chief of Police?" Answer:
13 "Yes." "And, again, I'm talking while you were the Chief
14 of Police." Answer: "No, not by me. I've never heard
15 that stated to anybody."

16 Do you agree or disagree with the testimony of Tom
17 Fautz?

18 A. With what Tom said for himself, yes. But we had a policy
19 that was typed up in there that stated there was no
20 exception of -- no exception of privacy that was made
21 through code of conduct through Internal Affairs that
22 covered the same -- that covered -- we thought covered
23 that. But I guess it didn't, from what I learned later.
24 This was later, and that's what I had went by.

25 Q. While you were the Chief of Police, if you were going to